

TAXATION OF PENSIONS ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1

Part 1 - Drawdown pensions

70. [Paragraph 1](#) amends pension rule 5 in section 165(1) of FA 2004 to provide that the cap on the amount that can be taken each year as drawdown pension applies only to a member's drawdown pension fund as defined in paragraph 8 of Schedule 28 to FA 2004 (Schedule 28). Where funds are withdrawn from flexi-access drawdown funds (defined in the amendments made by paragraph 3 of Schedule 1), there is accordingly no cap on the amount that can be withdrawn each year.
71. [Paragraph 2](#) amends the meaning of a member's drawdown fund in paragraph 8(1A) of Schedule 28. It provides that new members' drawdown pension funds cannot be created by the designation of sums and assets as available for the payment of a drawdown pension on or after 6 April 2015. But a drawdown pension fund existing on 5 April 2015 may remain a drawdown pension fund where the member designates additional funds to it on or after 6 April 2015, unless it was a flexible drawdown fund before 6 April 2015 because the scheme administrator had accepted the member's flexible drawdown declaration in respect of that arrangement.
72. [Paragraph 3\(1\)](#) inserts new paragraphs 8A to 8D into Schedule 28. Paragraph 3(2) clarifies when the new paragraph 8D has effect, in particular where either or both of the transfer and designation concerned were made before 6 April 2015.
73. New paragraph 8A(1) provides that a member's flexi-access drawdown fund is one where funds have been newly-designated as defined in new paragraph 8A(2).
74. New paragraph 8A(2) provides that newly-designated funds are those that have been designated on or after 6 April 2015 as available for the payment of a drawdown pension but in respect of which paragraph 8(1A), as amended by paragraph 2 of Schedule 1, does not apply. That is, newly-designated funds do not include funds being designated to a member's drawdown pension fund that was set up before 6 April 2015. Funds can also become newly-designated funds under new paragraphs 8B, 8C and 8D. Funds for the purpose of this paragraph include any sums and assets that derive from the designated funds, for example investment growth.
75. New paragraph 8A(2)(b) and (3) provide that the funds in a member's flexible drawdown fund that existed before 6 April 2015 become newly-designated funds on that date and cease to be member-designated funds.
76. New paragraph 8B(1) provides that new paragraph 8B(2) applies where the total drawdown pension withdrawn from a member's drawdown pension fund exceeds the maximum in pension rule 5 in section 165 (150% of the basis amount for that year, referred to as 'the cap') and where, additionally, before 6 April 2015 the member had not had a valid flexible drawdown declaration in respect of that fund accepted by the

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scheme administrator under section 165(3A) of FA 2004. New paragraph 8B(3) clarifies the circumstances in which a payment of drawdown pension would exceed the cap.

77. New paragraph 8B(2) provides that the sums and assets that made up the member's drawdown pension fund immediately before the payment that breaches the cap is made become a member's flexi-access drawdown fund immediately before that payment is made. This means that the payment will be made from a member's flexi-access drawdown fund as an authorised payment taxed at the member's marginal rate and will not be subject to any unauthorised payments tax charges that would otherwise have arisen.
78. New paragraph 8C provides that a member may notify the scheme administrator that they want to convert their member's drawdown pension fund to a member's flexi-access drawdown fund. It will become a member's flexi-access drawdown fund when the scheme administrator accepts the notification or, where the notification was accepted before 6 April 2015, at the start of 6 April 2015. This paragraph does not apply if a member's drawdown pension fund has already become a flexi-access drawdown fund under new paragraph 8B.
79. New paragraph 8D provides that where a member transfers their drawdown funds from one scheme to another as part of a recognised transfer, they can as part of the transfer notify the scheme administrator of the receiving scheme that they wish the transferred drawdown funds to be newly-designated funds from the date of the transfer.
80. [Paragraph 4](#) inserts new paragraphs 22A to 22D, relating to dependants, into Schedule 28. These new paragraphs broadly mirror the member changes under paragraph 3 of Schedule 1.
81. New paragraph 22A(1) provides that a dependant's flexi-access drawdown fund is one where funds have been newly-designated as defined in new paragraph 22A(2).
82. New paragraph 22A(2) provides that newly-designated dependant funds are those that have been designated as available for the payment of a drawdown pension on or after 6 April 2015 including funds that derive from the newly-designated dependant funds, for example investment growth. However this only applies where paragraph 22(2) of Schedule 28, as amended by paragraph 21 of Schedule 1, does not apply. That is, newly-designated dependant funds do not include funds being designated to a dependant's drawdown pension fund that was set up before 6 April 2015, unless section 167(2A) of FA 2004 relating to flexible drawdown applied to the fund immediately before that date. In addition funds can become newly-designated dependant funds under new paragraphs 22B, 22C and 22D.
83. New paragraph 22A(2)(b) and (3) provide that where the funds in a dependant's flexible drawdown fund that existed before 6 April 2015 become newly-designated dependant funds on that date, they cease from that date to be dependant-designated funds.
84. New paragraph 22B provides that where the total dependant's drawdown pension withdrawn from a dependant's drawdown pension fund for a year exceeds the maximum as set out in pension death benefit rule 4 in section 167, that is 150% of the basis amount for that year, the dependant's drawdown pension fund becomes a dependant's flexi-access drawdown pension fund immediately before the payment is made. This means that the payment will be made from a dependant's flexi-access drawdown fund as an authorised payment of drawdown pension taxed at the dependant's marginal rate and not subject to any unauthorised payments tax charges that would otherwise have arisen.
85. New paragraph 22C provides that a dependant may notify the scheme administrator that they want to convert their dependants' drawdown pension fund to a dependant's flexi-access drawdown fund at any time. The dependant's flexi-access drawdown fund will start from the time the scheme administrator accepts the notification or, where the notification was accepted before 6 April 2015, at the start of 6 April 2015. This

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paragraph does not apply if a dependant's drawdown pension fund has already become a dependant's flexi-access drawdown fund under new paragraph 22B.

86. New paragraph 22D provides that where a dependant transfers their drawdown funds from one scheme to another as part of a recognised transfer, they can as part of the transfer notify the scheme administrator of the receiving scheme that they wish the transferred drawdown funds to be newly-designated funds from the date of the transfer.
87. [Paragraph 6](#) amends pension death benefit rule 4 in section 167(1) of FA 2004 to provide that the cap on the amount that can be taken each year as drawdown pension applies only to a dependant's drawdown pension fund (defined in paragraph 22 of Schedule 28). Where funds are withdrawn from a dependant's flexi-access drawdown fund, there is no cap on the amount that can be withdrawn each year.
88. [Paragraph 7](#) amends section 168(1) of FA 2004 to add a 'flexi-access drawdown fund lump sum death benefit' (see paragraph 24 of Schedule 1) to the list of authorised lump sum death benefits that may be paid in respect of a member of a registered pension scheme. This is the equivalent of the existing drawdown pension fund lump sum death benefit in paragraph 17 of Schedule 29 to FA 2004 (Schedule 29).
89. [Paragraphs 8 to 12, 14, 15, 18 to 20, 22, 26, 27 and 29](#) make a number of consequential amendments to FA 2004, so that where the legislation refers to a member's drawdown pension fund or a dependant's drawdown pension fund, an additional reference is inserted to a member's flexi-access drawdown fund or a dependant's flexi-access drawdown fund as appropriate.
90. [Paragraph 13](#) amends section 206(1) of FA 2004 to add a flexi-access drawdown fund lump sum death benefit to the list of lump sum death benefits that are subject to the special lump sum death benefits charge. This charge is the liability of the scheme administrator and is currently charged at the rate of 55%. The rate is being changed to 45% by section 2 of this Act.
91. [Paragraph 16](#) amends section 216(1) of FA 2004 as it relates to benefit crystallisation event 5A (BCE 5A). BCE 5A occurs when an individual reaches age 75 having previously designated funds as available for drawdown. The amount of the BCE 5A that is tested against the lifetime allowance on the individual's 75th birthday is the increase in the value of the drawdown fund since the designation. The amendment provides that the amount that is crystallised under BCE 5A includes the value of any flexi-access drawdown pension fund on the date of the individual's 75th birthday less the amount previously crystallised when those funds were first designated for drawdown.
92. [Paragraph 17](#) amends section 273A(1) of FA 2004 which provides a power for HMRC to make regulations in connection with certain lump sum death benefits that are paid by an insurance company, where the payment is treated under section 161 of FA 2004 as being made by a registered pension scheme. It adds a flexi-access drawdown fund lump sum death benefit to the list of payments in connection with which HMRC may make regulations.
93. [Paragraph 21](#) amends the definition of a dependant's drawdown pension fund in paragraph 22(2) of Schedule 28. Funds must have been first designated as available for the payment of a dependant's drawdown pension before 6 April 2015. Additional funds can be added on or after 6 April 2015 to a dependant's drawdown pension fund existing on 5 April 2015. This applies only where the dependant had not had a valid dependant flexible drawdown declaration in respect of that arrangement accepted by a scheme administrator under section 167(2A) of FA 2004 before 6 April 2015, in which case the fund will be dependant's flexi-access drawdown fund from 6 April 2015.
94. [Paragraph 23](#) amends the definition of a drawdown pension fund lump sum death benefit in paragraph 17 of Schedule 29 to limit the benefit to payments under a drawdown pension fund or a dependant's drawdown pension fund. That is where sum and assets were first designated to the fund as available for drawdown before 6 April

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2015. Death benefit payments from a flexi-access drawdown fund are provided for separately (see paragraph 24 of Schedule 1) and cannot be drawdown pension fund lump sum death benefits.

95. [Paragraph 24](#) inserts new paragraph 17A into Schedule 29. This provides the conditions for a payment of a flexi-access drawdown fund lump sum death benefit. These are the same conditions as for a drawdown pension fund lump sum death benefit except that they apply where sums and assets were designated as available for drawdown on or after 6 April 2015 other than to a member's or a dependant's drawdown pension fund.
96. New paragraph 17A(1) to (4) provide that a lump sum death benefit is a flexi-access drawdown fund lump sum death benefit where a member, dependant, nominee or successor was at the time of their death entitled to income withdrawal from a flexi-access drawdown fund, and it is not a charity lump sum death benefit as defined in paragraph 18 of Schedule 29.
97. New paragraph 17A(5) and (6) provide that the maximum that can be paid as a flexi-access drawdown fund lump sum death benefit is the total of the sums and assets in the flexi-access drawdown fund immediately before the payment is made.
98. [Paragraph 25](#) amends paragraph 18 of Schedule 29 to allow a charity lump sum death benefit to be paid in respect of a member's or a dependant's flexi-access drawdown fund.
99. [Paragraph 28](#) amends paragraph 20(4) of Schedule 36 to FA 2004 (Schedule 36) to provide how a valuation for the purposes of the lifetime allowance is carried out where a member has a flexi-access drawdown pension that before 6 April 2015 was a capped drawdown pension. This paragraph provides that where the first benefit crystallisation event (BCE) in respect of the member that occurs on or after 6 April 2006 is also on or after 6 April 2015, the valuation for the purposes of the lifetime allowance is 80% of the maximum annual drawdown amount that could have been paid at the time the funds convert to flexi-access.
100. [Paragraph 30](#) amends regulation 2(1) of the [Pension Benefits \(Insurance Company Liable as Scheme Administrator\) Regulations 2006 \(SI 2006/136\)](#), to add a flexi-access drawdown fund lump sum death benefit to the list of lump sum death benefits that when paid by an insurance company cause the insurance company to be treated as the scheme administrator for the purposes of the special lump sum death benefit charge to income tax under section 206 of FA 2004. The insurance company is liable to account for that charge under section 254(1) to (7) of FA 2004, and liable to penalties for failing to make a return or fraudulently or negligently making an incorrect return.
101. [Paragraph 31](#) amends section 636A of ITEPA 2003 to provide that, where a flexi-access drawdown fund lump sum death benefit is paid, although it may be liable to the special lump sum death benefits charge by virtue of section 206 FA 2004, it is not liable to any other income tax.
102. [Paragraph 32](#) repeals various provisions relating to pre-6 April 2015 flexible drawdown in FA 2004 and Finance Act 2011 (FA 2011) as well as revoking the [Registered Pension Schemes \(Prescribed Requirements of Flexible Drawdown Declaration\) Regulations 2011 \(SI 2011/1792\)](#).
103. [Paragraph 33](#) amends the [Pension Schemes \(Application of UK Provisions to Relevant Non-UK Schemes\) Regulations 2006 \(SI 2006/207\)](#) to make consequential amendments to regulations 6 and 7 as a result of the Act's repeal of sections 165(3A) and 167(2A) of FA 2004. It also makes a number of consequential amendments to regulation 14 to reflect the changes made by this Act to Schedule 28. Regulation 14 lists every provision in Schedule 28 that refers to a "scheme administrator" and modifies how Schedule 28 applies in relation to pensions paid by a relevant non-UK scheme by substituting "scheme manager" for "scheme administrator" wherever this occurs.

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104. Paragraph 34 amends regulation 12 of the [Registered Pension Schemes \(Transfer of Sums and Assets\) Regulations 2006 \(SI 2006/499\)](#) in respect of members' and dependants' drawdown pension funds and recognised transfers. The paragraph extends the circumstances when this regulation applies to include transfers of members' and dependants' flexi-access drawdown funds. It provides that a transfer of sums and assets from one arrangement to a new arrangement under which no other sums or assets are held is a recognised transfer. The sums and assets transferred are treated as remaining sums and assets held under the old arrangement for various prescribed purposes set out in [SI 2006/499](#). Paragraph 34 also removes references to the conditions for flexible drawdown arrangements for both members and dependants as these are no longer required from 6 April 2015.
105. Paragraph 35 amends the [Registered Pension Schemes \(Provision of Information\) Regulations 2006 \(SI 2006/567\)](#) as a consequence of the introduction of flexi-access drawdown to remove information requirements on scheme administrators that are no longer required and extend existing information requirements in connection with drawdown pension funds to include similar requirements for flexi-access drawdown funds.